

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

**SUB COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY
SB 103**

Call to Order: By **CHAIRMAN FRED THOMAS**, on January 22, 1999 at
11:20 A.M., in Room 402 Capitol.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Eve Franklin (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Subcommittee meeting & Date(s) Posted: SB 103, 1/20/1999
Executive Action:

SUBCOMMITTEE MEETING ON SB 103

Sponsor: SEN. EVE FRANKLIN, SD 21, Great Falls

Informational: Russell Hill, Chief Legal Counsel
State Auditor's Office
Susan Witte, Representing Blue Cross and
Blue Shield of MT
Nancy Ellery, Administrator, Health Policy
and Services Division, DPHHS
Tom Ebzery, Representing Yellowstone
Community Health Plan
Paige Dringman, Representing Health Insurance
Association of America

**Jon Metropoulos, Representing Farmers Insurance
Group of Companies**

CHAIRMAN FRED THOMAS called the Subcommittee meeting to order and asked **SEN. EVE FRANKLIN** to start by explaining the bill.

Opening Statement by Sponsor:

SEN. EVE FRANKLIN said that she had brought extra charts so people could follow along because the visuals sure helped her. She asked **Russell Hill** to please chime in if she makes a mistake.

EXHIBIT (ph

s17b01)

SEN. FRANKLIN said the purpose of bill **SB 103** is right now an individual obviously gives their personal information to their insurer. There is no limitations as to how that happens between that reciprocal relationship. There is no limitation here (she is showing a designated area on the chart). The health care provider, it says individual, group policyholder, employer on their chart. There is no limitation on this under existing law, and this bill won't change that.

CHAIRMAN THOMAS states the purple arrows are current law.

SEN. FRANKLIN agrees the purple/blue arrows are current law and there is no change in that. Even the red arrows, there is also in this bill, no change in that. This does not affect for the purposes (because she has no color), the arrows in red on their chart, are also existing law. What they do is they allow, the insurer to give information without authorization, let her underline that without authorization to all these people. And that is existing law and that doesn't change in this bill. Right **Russell**?

Discussion:

Russell Hill, Chief Legal Counsel, State Auditor's Office, Commissioner of Insurance, answered, it doesn't change to the extent that they can still do it with the caveat of the agreement.

SEN. FRANKLIN replied right, but it doesn't change this. But it doesn't do, when he says it is the caveat of the agreement, the authorization is in current law now. Under current law there is ... she asked **Russell Hill** to explain the nature of that agreement.

Russell Hill said, let him just quickly have them look at the color chart hand out which is the same as the one that **SEN. EVE FRANKLIN** has put up on the board. The blue arrows are information coming in to the insurer, that's pursuant authorization forms. It is his understanding that is really no change. That is not where the concerns are. First of all the information comes into the insurer, if the insurer as part of that authorization has permission to pass the information along, nothing changes that. They can get those blanket authorizations and pass the health care information to whoever they want to. The red arrows on this chart are situations currently in law, where an insurance company can pass along private health information, even without the permission of the individual that they refer to.

SEN. FRANKLIN confirmed, so those boxes in the red is existing law without permission.

Russell Hill said and the section numbers there refer to the section numbers in the statute that they amend, that already allow disclosures without permission of the individual.

SEN. FRANKLIN stated so in this bill, right now, the insurer can still give other insurance companies the information. They can give agents, adjusters, claim handlers, auditors information without additional authorization. They can give it to potential buy-out-mergers. They can give it to consumer agencies, to law enforcement, to researchers without any separate authorization other than what is in current law.

CHAIRMAN THOMAS said that is not in current law. The insurance company cannot send him data on a client of his that he doesn't have, no.

SEN. FRANKLIN asked what is he trying to do, what role?

CHAIRMAN THOMAS responded, as an agent.

Russell Hill said, he disagrees.

CHAIRMAN THOMAS asked coming right out of the Auditor's Office, is that an edict right out of the Auditor's Office, that it can be done. Is his statement made up by the Auditor's Office, or is it a law?

Russell Hill said, the law says, if you look at subsection 3 and 12, up on the board at that red box up to the left of the insurer. There are broad provisions to allow an insurer to pass this information along even without the permission of the

individual. That is exactly. If he tells him the edict, he will chase it down and if he is wrong about that, they will change.

SEN. FRANKLIN said that may be a separate issue in terms of some ruling that has come out of the Auditor's Office, but she can't speak to it.

Russell Hill asked if it would help to look at the statute and just see what the statute says.

CHAIRMAN THOMAS said he thinks it helps to just use common sense.

SEN. FRANKLIN asked him to explain to her his situation, so that she can understand it.

CHAIRMAN THOMAS said he thought he already did. The insurance company is not going to send him data as an agent of their's about a client of his, that is their private medical data. It has been brought out by the Auditor's Office that that is against the law and policed, in particular MMBP (Montana Medical Benefits Plan) to death on that very thing. So it might be good to find out what authorization they are using for that.

Russell Hill asked if it was worth it to look at the statute that he thinks is controlling here, aside from what ever the Department has done?

SEN. FRANKLIN said because she thinks that's a different issue. It may be an issue that is personal and he could take it up with the Auditor's Office.

CHAIRMAN THOMAS said okay and no it is not a personal issue. He thinks it is right what they are doing. He doesn't think they should do that. He doesn't have any reason to have that information. But it is current law.

SEN. FRANKLIN said she thought for the purposes of this discussion, the point is this bill doesn't change current law, whether there is a disagreement in the interpretation or not. This bill doesn't change the relationship of those red arrows just for the purposes of that discussion.

SEN. FRANKLIN said so let her go to what it does change. What it does change...

SEN. GRIMES said he understands that what they are doing is trying to get an overview here and then they can list their differences. He is trying to understand what they are doing. He is trying to get the overview.

SEN. FRANKLIN said it was from her understanding also, these folks can share information with each other, under current law.

CHAIRMAN THOMAS reiterated, under current law.

SEN. FRANKLIN said, what this law does is .. these folks... in the secondary ring of red boxes, they want to pass that information on, and they need to get a separate written authorization from that individual.

Susan Witte, Representative, Blue Cross/Blue Shield asked, when they want to pass it on to anybody?

SEN. FRANKLIN explained if they want to pass it on to these people, or anybody, or each other. If they want to make a disclosure beyond their... they don't need permission according to what she understands is in existing law. The don't need permission to get it here (indicated on chart on board). But this level says, you have got to get information, you have got to get authorization from the individual if you are going to pass it on here... and pass it on there. So in a way it kind of puts a gate in terms of where that information can then go after that.

Then the other issue that was a concern to some people was the record keeping provision. Again from what she understands, there is a 3 year record keeping provision that is incumbent upon these folks to keep that 3 year record of where they have disclosed the information, but not with these people. That is it in a nut shell. She thought they could go on to the actual individual amendments and go through them.

Informational:

CHAIRMAN THOMAS said they have a plethora of amendments.

SEN. GRIMES said he didn't want to shorten her presentation.

SEN. FRANKLIN said she just wanted to make it as simple as possible because the other information is more arcane. She just wanted to do an overview of the record keeping because that is an issue. The 3 year record keeping area challenges the insurer. A major change that this legislation does, is not allow secondary disclosure, depending upon how you look at it, secondary disclosure, from those other boxes without separate written individual authorization from the individual. The middle insurer, no. But it does require it from that secondary ring, as she understands it.

CHAIRMAN THOMAS asked if that was the intention?

SEN. FRANKLIN and **Russell Hill** replied that is the intention.

CHAIRMAN THOMAS asked, how many amendments do they have? How many people have amendments that are present? Blue Cross?

Russell Hill said in the material that he handed out, that also included amendments from ACLI.

EXHIBIT (phs17b02)

CHAIRMAN THOMAS asked **Russell Hill** if this was his work?

Russell Hill responded it is. Those are the ACLI (American Council of Life Insurance) and there are some that are concerns that weren't in there.

Nancy Ellery said she'd start with the simplest amendment. It may not even be needed, but they are trying to protect themselves and the Department because they contract with insurers for the CHIP program and they contract currently with HMO's to provide physical managed care. They just want to make sure that the law allows them to continue to take the information they get from their contractors who are insurers and they can continue to send it to the Federal government. Because part of their contract with the Federal government is that they will take information about the services that have been provided and report back to them. Because they are footing a large part of the bill. They think this clearly gives them that exemption and it would make them feel better if it was in the bill clearly. She thinks other interpretations are that it is okay, but they just want to be real sure that their programs are exempted. They don't intend to pass it on to anybody for marketing purposes, or whatever, all they want to do is give it to the federal government. **EXHIBIT (phs17b03)**

CHAIRMAN THOMAS said he had a question for **Nancy Ellery**.

SEN. FRANKLIN said she hasn't looked these amendments. These they just received today, so she doesn't have a real feel for how it fits in. But **Nancy** and **Russell Hill** has a conversation?

Russell Hill said his opinion is that they are not necessary, but they don't do any harm.

Nancy Ellery stated the amendments would make them feel a lot better.

CHAIRMAN THOMAS said the terms of conditions do not include an HMO maintenance organization, ..

Nancy Ellery continued, "administered by the Department" that is the clear difference.

Russell Hill said they are not talking about category's of insurance entities, they are talking about the Departments use of them in kind of a contractual relationship?

Susan Fox clarified that is not what that says. You don't administer a health maintenance organization, you contract with the health organization.

Nancy Ellery said let's take CHIP as a real good example. They administer the CHIP pilot through contracts with insurers, who are HMO's.

Susan Fox clarified, but that is not what this says. This says that health maintenance organizations, administered by the Department managed care organizations administered by the Department or other programs, administered by the Department, you don't administer an HMO. They contract.

Nancy Ellery asked **Susan Fox** how could they change it to show that they are administering the program that they use insurers to....?

CHAIRMAN THOMAS suggested they could say "administrated or contracted by" ? **Susan Fox** can figure it out.

Nancy Ellery replied, you get what they are trying to do.

SEN. GRIMES said maybe they were contracted just before health maintenance organization, and then strike the coma and put or.

Nancy Ellery stated, but that's not an insurer because that is just a regular...

Russell Hill suggested, does it work to say "insurance producer does not"....

CHAIRMAN THOMAS said he does not want them to micro-manage this, **Susan Fox** can figure this out. Is that fair enough **SEN. EVE**?

SEN. FRANKLIN replied, yes.

Motion: **SEN. FRANKLIN** moved **THE AMENDMENTS PREPARED BY JOHN C. KOCH, DPHHS.** (Motion was put on hold -same Amendments as indicated in Exhibit #3.)

CHAIRMAN THOMAS said to **SEN. FRANKLIN** he didn't know if there were going to have to worry about these amendment right now. **Susan Fox** is going to have to do some work on this, so lets hold for a while. They will have her come back with cleaned up amendments. They have about 4 or 5 different items that **Susan Fox** is going to work on.

Questions from the Committee Members and Responses:

SEN. GRIMES asked if he could talk about this in the big picture. Clearly there's a lot going on in the health care arena right now, including a very interest attempt, a genius attempt to create a health care data base. The issue here has a lot of interplay with confidentiality issues. Would it be their recommendation, in the big picture after they go through these issues and work on them, that they hold this bill until he can get the other one out of drafting, or at least get the language from **Susan Fox** out to find out what kind of coordination it would take to combine the two bills? What he wouldn't want to do, is if there is critical information that needs to be passed between entities in the health care data base, that could potentially be identifiable to an individual. He hasn't figured that out yet, because he has to go back and find some health care information data base project. He would be very concerned if they pass something out of here that would affect that in a negative way. That's a little bit selfish because it is his bill. He thinks that is a very very important bill for the State of Montana. And a very important step in the right direction. He would not want the two to conflict.

CHAIRMAN THOMAS said he would suggest that they do their work in the Subcommittee to work these amendments over. They will prepare the bill as the best they can, report it back to the Public Health Committee. And then what the Committee does there will be up to the Committee. If **SEN. GRIMES** wants to arrange a hold with **SEN. FRANKLIN** that would be between you and her. If that can't be done and you feel strongly you can ask the Committee to hold the bill, and table it, those are just those options. But this Subcommittee won't hold it. It would be a Committee decision rather than a Subcommittee decision. It would be **SEN. FRANKLIN'S** decision more than any. They'll let the process proceed.

SEN. FRANKLIN said that makes sense, let's do the work in the Subcommittee and see where we are after that.

CHAIRMAN THOMAS asked **Tom Ebzery** about the amendments he indicated he had.

Tom Ebzery, Representing Yellowstone Community Health Plan, said he has talked to the bills sponsor and to **Russell Hill** and others. He has asked that the effective date be January 1, 2000, under the provisions of the bill that they had before. There is a Rule Making provision in it and something that is sweeping as this is going to pass. He knows that the Yellowstone Community Health Plan, it is going to take them a while to get into synch and develop new procedures and so forth. Instead of October 1, a few extra months would assist them.

EXHIBIT (phs17b04)

SEN. FRANKLIN said she thought that would be fine. She would just take issue that it probably would affect community health plan making changes truthfully. For what she understands it is reasonable.

Tom Ebzery explained it is mostly procedural. He thinks they are going to have a learning curve here. They are going to need the time to make sure.

SEN. FRANKLIN answered absolutely and she thinks the Rule Making issue may even be more of an issue. She is just looking at what they do.

Tom Ebzery said he is talking about that and the Rule Making is the principal thing. This is not to preclude them from beginning Rule Making. They can begin Rule Making as soon as the bill leaves here, if they wish, but it wouldn't be effective until then.

SEN. FRANKLIN answered that's fine.

SEN. GRIMES asked what would be your major concern with the impact that this bill had on the community health plan?

Tom Ebzery answered he believes there will be some new procedures. They will have to do some changing, and there is going to be some Rule Making involved in this in terms of interpretation of what the definitions are. It will take some work.

SEN. FRANKLIN said she is not going to argue the point. She thinks it is reasonable to give them time, her concern is that the issue is overstated, just for the record. The issue is overstated, of how many procedural changes. From her understanding of the bill, she is not, just for the record, and she is not fighting the amendment, but her understanding of the bill is that the Community Health Plan probably is not doing very many of these functions that would require a change. They are

probably not brokering their information in the way that this bill would put some gates on.

Tom Ebzery answered that might be so, **SEN. FRANKLIN**. He said what **SEN. THOMAS** is common sense, might be the guide that they would use. When they have 12,000 enrollees they want to make sure they do the right thing.

SEN. GRIMES said it sounds great to him. For the purpose of this Subcommittee they need to understand what some of those examples are. That would help them put together the best bill, some examples of how current they use a discretion in judgement that this bill will now put into law. It will take it out of discretionary judgement and now put it into law, or even transferred information, that they currently do in their best judgement, and any way that this will eliminate those, they need to understand clearly as they go through the bill.

CHAIRMAN THOMAS said, okay **Susan Fox** will keep the amendment in order. He said **Paige Dringman** was next. She said as a procedural questions, she wasn't here for the Hearing because she was just retained the other day by the Health Insurance of America. She has looked at Blue Cross/Blue Shield's amendments and ACLI's, and maybe the best thing is to go to them because she doesn't have separate ones. She does have a couple of questions with regards to those amendments.

CHAIRMAN THOMAS asked **Paige Dringman**, if she wanted to get together with those people and they will meet again.

Susan Witte, **Blue Cross/Blue Shield** said she sees that **Russell Hill** has done a pretty good analysis of Blue Cross's amendments, and ACLI's too, right? **Russell Hill** responded that the Department of Justice had one in there too.

Susan Witte said she wanted to ask just one question, on how the red boxes are? What they are concerned about, is do they need to get a separate written disclosure if anything is going to go out of these red box areas? She is wondering if the second written disclosure will impact what they currently do under the definition of insurance function.

Russell Hill answered, put Blue Cross in one of these boxes. If Blue Cross is in that big yellow box in the middle and passing on information on their own policy holders, then no you don't. If Blue Cross happens to be in one of the red boxes, like up at the top of the chart, then yes. If you got information from another insurance company, this is again without permission of the individual, and then you wanted to pass that along to somebody

else, then you would. And frankly, current law prohibits you from passing that along in a lot of instances, unless you get that separate authorization.

CHAIRMAN THOMAS said he was going to use some everyday examples, if she would allow him because he is in the business to some degree. If he has a client that applies to Blue Cross for insurance, are they going to be able to inform him, under this bill, whether that client was accepted or not?

Russell Hill answered absolutely.

CHAIRMAN THOMAS asked and that is not part of the insurance function?

Russell Hill replied, yes he thought that was.

CHAIRMAN THOMAS said insurance functions are all transmittable and precluded from the law.?

Russell Hill answered, you can still make those disclosures, you bet.

SEN. GRIMES is it **SEN. FRANKLIN'S** intention or is it the Auditor's Office intention to go a step further with further legislation later to actually, to use the box analogy to come down and actually limit the transactions from the insurer?

Russell Hill replied they have had absolutely no discussion. Its never come up. What he is talking about may implicate the Rule Making. There is an intent to have the Rule Making having to do with these, nothing to go further beyond what this bill already has.

SEN. GRIMES said they will need to explore that more.

Russell Hill said yes when they get to Rule Making.

Jon Metropoulos, Farmers Insurance Group of Companies said that **Russell Hill** said that if you are an insurer, you can use the information.

Russell Hill asked if you are the insurer in the yellow box?

Jon Metropoulos said yes, and you can provide it pursuant to the right hand arrow coming out of the top to other insurance companies?

Russell Hill replied that's right, without permission.

Jon Metropoulos said his question is that it seems to him the real issue is the purpose of the information is to explore, if you are the insurer, and you provide the subsidiary the affiliate of that company in order to market a public insurance product..

Russell Hill answered that is, if you look at the yellow boxes, that is the big change. You can no longer do that under this bill for the purposes of marketing.

SEN. FRANKLIN clarified, insurance function is defined. In terms of what do you, need to do consumer service of insurance function, but without permission, if you fall outside that consumer service. You can do it with permission, but you can't do it without permission.

Russell Hill explained the insurer itself can use the information unfortunately. He doesn't like that. If there is a disclosure without permission, it can't even to an affiliate, and that is where ACLI, they are very opposed to that. They think, if it is their affiliate, they should be able to give them this information for no other reason, than they are going to market. Then understand, when they are talking about marketing its not even marketing an insurance produce that the original insurer sells. It can be anything. It can be a holding company that has 30 or 40 companies, as affiliates.

SEN. FRANKLIN said so it is true, it is kind of a philosophy decision. That is not the procedure parts of the bill, that is the conceptual part.

CHAIRMAN THOMAS asked, whose problem are they fixing there?

SEN. FRANKLIN answered, remember in the hearing, for example **Dr. Rausch, Shelby**, he and his patient got solicited, to change the medication he was prescribing, and it was done through a devise by which information was passed on that person's private records to presumable ultimately a marketer, who then had by name, that person's prescription and was able to write a letter to the patient and the doctor, and change your prescription to our product. That the kind of example that they are talking about. That is a real issue for them. She talks to people and if they find out their name and medical history is available, they kind of go, "Oh my God!" It is a pretty scary thing. So that is really it.

CHAIRMAN THOMAS said when we say medical history, there is a difference. That can mean that prescription, which he thinks no one else should have, or it can mean their whole records.

SEN. FRANKLIN said not to be dramatic, what she will say is components of their medical record are available whether it's a prescription. If it becomes more sensitive, that description if fairly innocuous, this is a cold preparation, what if it is a diabetes medication, or a heart medication, or a psyche tropic drug, then it starts to get a little closer to the heart.

Susan Witte asked what if it was the pharmacy that released that information too, and not even an insurer? That might have been what was happening.

Russell Hill replied they don't reach pharmacies, and pharmacies are a big part of the problem.

SEN. FRANKLIN said they are right about that. If you are going to be a purist this doesn't necessarily get every offender, but it gets some.

Paige Dringman do any NACI models allow that marketing right now along as it's with affiliates and you are not selling your list for example to a pharmaceutical company?

Russell Hill replied that the NAIC recently in September adopted a huge new model on confidentiality. That it is his understanding, that nobody from industry likes. He didn't like it, it reaches marketing, it's 24 Pages long. If you adopt that model law, it would drastically restrict what you do for marketing. He doesn't think it completely eliminates.

Paige Dringman asked the broad question because her understanding is that the NAIC model does not prohibit marketing to affiliates.

Russell Hill replied in terms of the affiliates, maybe it doesn't, he could check on it.

Susan Witte one more question. Then she would like to go through these amendments, they could clean them up pretty fast. Just look at the definition of insurance function, in subsection 10, Page 3, Line 15. Say that Blue Cross/Blue Shield needs to transmit medical information to someone for claims administration or any of the other topics that are listed under insurance function. At the time of application or enrollment, the person signs an authorization for release of medical, it's good for like 36 months, does this bill that every time they do claims administration, or anything else that is listed in insurance function, they have to get a separate written authorization?

Russell Hill said absolutely not.

Susan Witte said that is just not clear to her, that's why she has the amendments in that she does. They are on Page 9.

SEN. GRIMES asked **Susan Witte** to repeat her question. She stated her question is, the topics that are listed under insurance function, claims administration is an example, what she is wondering, Blue Cross/Blue Shield, right now gets an authorization from an individual to release their medical records for XWZ purposes, any time they do a function that is listed in insurance function, claims administration, etc., do they need to get an additional separate written signed, dated authorization.

Russell Hill said it's even better than that. First of all, they don't have to get that separate signed authorization, even if the authorization she got expires, they can disclose it to one of these other companies, if they need to without their permission. Then you will never have to get a separate authorization, if it is an insurance function.

SEN. GRIMES said let's say you have a legitimate transfer of information and he is going to use research as an example, where you transfer some maybe genetic or birth related information to research firm, let's take Shodair Children's Hospital, then they have to release it to a National organization in order to coordinate the genetics information. Do they have to get permission then, or is that not even covered because it slips out from under the insurance?

Russell Hill replied, it's covered under current law. If they look at the red box that says researcher section 10, and then look on Page 10 of **SB 103**, starting at Line 21, that's the subsection that currently, and they make some changes, but they haven't substantially altered anything. Currently this is exactly the scenario that **SEN. GRIMES** is talking about, actuarial or research studies.

Susan Witte, the first amendment suggested is to insert additional language on insurance functions. She is reading some of **Russell Hill's** analysis fact sheet.

SEN. GRIMES asked her to explain to the Subcommittee the language they were inserting, and what the amendments were, then present her arguments.

Susan Witte read from Exhibit the first amendment that Blue Cross proposed to **SB 103**. She explained the reason they asked for the amendment to be considered, is because it is part of NAIC model, and what it does, it gives an opportunity to get in additional insurance functions, if some of those might come to

light, but they can't be allowed, unless you have the written prior approval of the commissioner. She thinks it is a reasonable amendment to expand the list if they need it.

SEN. FRANKLIN responded that it seemed to her that it would be covered under Rule Making. It's like they are adding a third function, sort of a shadow function, they have statute, they have administrative law, and this is sort of another animal.

SEN. GRIMES said his question would be is it because there may be additional things that come up because of the changes in health care, or because you are concerned about how this might be interpreted in the Rule Making process?

Susan Witte said no, she thought it was because there are additional things that might come up in insurance functions. She really thinks insurance function needs to be statutorily defined. It shouldn't be subject to Rule Making. It should be right out there, up front.

SEN. GRIMES said question for **Russell Hill**, had he intended for the Rule Making authority to further define these items under functions?

Russell Hill replied no. He didn't think that's one of the things that is laid out. He missed part of the conversation. He understood the industry wanted a definition of insurance function. What the amendment does is clearly the bill takes out marketing, the amendment allows a commissioner on a company by company basis, or industry wide basis, to stick back in marketing, at his discretion.

SEN. FRANKLIN asked **Susan Fox** about that.

Susan Fox answered that in looking under the Rule Making functions that have been added in the bill it is very clear what they are allowed to do. So she doesn't think they could expand a statutory definition by the Rule Making unless they were given the authority.

SEN. FRANKLIN said she finds it hard unless there is incredible radical deep space nine changes in the next couple bienniums in insurance industry that there would be a problem with this.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 38}

SEN. GRIMES said he thinks he understands both side of this amendment. Except he would still like to have a discussion on

the uses of marketing and understand that part better in order to be able to make a decision.

Tom Ebzery commented that when **Susan Witte** put this amendment together, he doesn't think that she was intending to give the commissioner discretion to weaken or strengthen privacy on an individual basis. That was not the intent at all. He thinks that definition or the analysis certainly goes against what he read her purpose to be. He thinks there ways to say you don't like the amendment, but giving the commissioner the authority to provide company by company exceptions, to let them do these things, he doesn't think that was what her intent was.

CHAIRMAN THOMAS said if you allowed it for one, you'd be allowing it for all. He said they would go to the second amendment.

Susan Witte said the second amendment was Page 4, Line 28, Blue Cross would recommend that the language, "directly or indirectly" obtaining medical record information be stricken because it is vague. If you sneeze you get something indirectly. She doesn't know what it does, it doesn't do any thing.

SEN. FRANKLIN asked if **Russell Hill** could articulate his opinion.

Russell Hill responded that first of all this in a definition of medical record information. Understand that medical record information is a subset of personal information, with the exception of marketing, the only other place in code where this medical record information term is used is when the individual asks the insurer for access to their own healthcare information. What the amendment does, if you don't include within that definition healthcare information that insurance company got indirectly, not directly from the individual's doctor, but from another insurance company, or consumer reporting agency, whatever. They don't have to provide the individual to access to their own information because it's not technically a medical record information. That's is the only benefit of this and it's not a big amendment, but it's a loop hole in current law.

CHAIRMAN THOMAS asked a loop hole to do what?

Russell Hill answered to define out from medical record information, current law allows an insurance company to say, if we got your healthcare information from somebody besides the provider, if they got it indirectly not directly from the provider, it's not medical record information.

SEN. GRIMES said okay, this is the definition section, and he is saying the only place is that term occurs other than when

somebody is asking for their own information is, in the case of marketing. Where is that, is that somewhere in this bill, or just in the statutes?

Russell Hill said on the analysis, he explained the marketing,

SEN. GRIMES clarified he was asking where this definition is used. He assumes there are only two places it is used, one is marketing, and one is for individuals, so he is just trying to get a handle on where it is used so he can see what the impact is directly or indirectly.

Russell Hill explained the marketing is under the marketing section, which they struck, that is on Page 11, Subsection 12, Line 10. So if the bill went through it wouldn't be relevant to marketing because they get rid of marketing.

SEN. GRIMES said it would only be relevant then to individual requests.

Russell Hill replied that's right, and that doesn't appear in the bill, it's in a separate provision, which they don't amend, having to do with an insurer's right to access to their own information.

Tom Ebzery said as a lawyer he is having a tough time trying to figure out what indirectly meant, that could mean anything, there is not much definition on how you get this. He heard what **Russell Hill** said, but he thinks it is pretty clear as to what it is. The record information is information that you get from them, but when it says "directly or indirectly" it could mean all types of things.

SEN. FRANKLIN asked if she could ask for an example of what one of those ways might be.

Tom Ebzery said he is trying to think, what does indirectly mean, does that mean if somebody slipped it under the transom, he doesn't understand. "Like Harry, here's some stuff." What does it mean?

Russell Hill responded it includes all of those. If private records are within the possession of the company and somebody wants to know what the company has on them, he doesn't see a problem with making them give copies of what was slipped under the door.

SEN. GRIMES said you're saying that companies now would not give everything that have got, they may give only portions of what

they have directly received, but wouldn't supply statical information that they indirectly got. What if they didn't know that they had that indirect information in their data bank, does that make them liable for not turning that over to an individual who makes a request? **SEN. GRIMES** gave an example.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 5.1}

Russell Hill said there are two answers. First what they are talking about has nothing to do with whether they got it directly or indirectly. It's whether they know its there. His scenario applies equally if they got it directly, they just don't know if it is in their data base. Secondly, if somebody requests and you don't know it is there, and whether they can sue you, another provision that doesn't appear in this bill, these are severely limited rights of action for somebody to sue on disclosures. If they look at the end of this Chapter, there immunity, there is huge limits on liability.

SEN. FRANKLIN said that is Chapter 3319-301, 407 and 408.

SEN. GRIMES said what he is saying is that whether they have this in the statute or not, there are things that have an affect for more than this. This doesn't set up any additional liability.

SEN. FRANKLIN commented that was her understanding also as **Russell Hill** explained it to her, was that there were other in Title 3319.301 there are significant immunity provisions.

Russell Hill said the immunity is actually in Title 3319.407 and Title 3319.408.

Paige Dringman said she has a question that says medical record information means personal information, you go to personal information, is says, "any individually identifiable information gathered in connection with an insurance transaction." So they are contemplating something that is not gathered in connection with an insurance transaction? They are going to have some information that they are calling "indirect", but they did not obtain in connection with an insurance transaction, would obligate them whether you have this direct or indirect in there to turn over anything they obtained in connection with an insurance transaction, wouldn't it? Because this reference is personal information and personal information is broad enough to include that category.

Russell Hill said he wasn't following.

SEN. FRANKLIN said she is trying to clarify "personal information" like date of birth.

Paige Dringman said personal information is identified. Its huge, but medical record information, means personal information. Medical record information means, any individually identifiable gathered in connection with an insurance transaction, that relates to an individual's physical or mental condition, etc. So her questions is what is there that they are contemplating their "directly or indirectly" is going to give them that is not information gathered in connection with an insurance transaction?

{Tape : 1; Side : B; Approx. Time Counter : 0 - 8.2}

Russell Hill replied it only has to do with the individual's right of access which doesn't appear in this bill. That is the only time, aside from marketing that is the only time this term is only relevant.

SEN. GRIMES at the expense of taking more time, he wants to make sure, if the language on Page 11 wasn't stricken that refers to marketing, then the addition of the word "indirect" would have enormous impact on what could be used for marketing and what isn't. Right now about the only thing that can be used for marketing then, indirect information, since no personal record information can be used. Does he understand that correctly?

Russell Hill said he thought it would have a bigger impact, but understand in Subsection 12, that medical record information, is not all medical record information. It's that, that relates to an individuals character, personal habits, mode of living, or general reputation. Now that's a different definition, than personal information. It could still include healthcare information.

CHAIRMAN THOMAS said go to amendment number three.

Susan Witte said amendment #3 is Page 8, Line 17. She said she was reading **Russell Hill's** comments back on this amendment too. What this sets up, is you have this authorization, the authorization has to say all this stuff on it and that's fine, but it also puts in- "the authorization says the record of any subsequent disclosures. All they were trying to say, was the authorization say, you can request a copy of that if you want, you may request a copy of that record, rather than just list it out, because that is what she thought it meant. It's not a big deal though.

SEN. FRANKLIN said she wasn't sure of what the rationale was, she wrote a note to herself. If you change it to may request, it probably leaves it open, so you can request it, but they don't have to give it.

Russell Hill suggested may be just upon request.

SEN. FRANKLIN said maybe they could have it say upon request.

CHAIRMAN THOMAS said they were on Amendment #4.

SEN. GRIMES said he has some questions on this portion of the bill, but he will just come back to it later, go through all the amendments first.

Jon Metropoulos said on this section of the bill he asked if the amendments go to this, so he should interject.

{Tape : 1; Side : B; Approx. Time Counter : 0 - 11.5}

Russell Hill asked if he has his draft, as he understood **SEN. GRIMES** that this was one of his concerns. If they would look at his draft on Page 13. Nobody has an amendment, but he thinks what they talked about works. If he would like to add, there is no intention to reach litigation or anticipated litigation, and if he wants to make that perfectly clear he can take the language, and it appears right at the top of Page 14 that appears in other sections of this information and privacy act. They could take that language and tack it on to subsection 8. He understood that is what **Jon Metropoulos** was recommending.

Jon Metropoulos replied yes.

Russell Hill stated he has no problem with that.

CHAIRMAN THOMAS said they will go back to **Susan Witte's** amendment number 4.

Susan Witte said actually Amendment #4, 5, and 6, may be taken care of **Russell Hill** telling them that they don't have to go out and get that secondary written dated disclosure. Amendments #4, 5, and 6, she will just go with the first one which is Page 9, Line 9, of the bill, it talks about disclosure. They would ask that the language limited to that which is be stricken. Blue Cross's Amendments #4, #5, and #6, may not be necessary, if what **Russell Hill** is telling them, that they don't have to get second written disclosure to do insurance function. They might not need these amendments.

CHAIRMAN THOMAS clarified they were on Amendment #5, of **Russell Hill's** draft.

SEN. FRANKLIN said if you are working off of **Russell Hill's** draft it is Amendment #5, Page 9, Line 9.

Susan Witte said she was not sure how you would define, you can make disclosure, but disclosure is limited to that which is reasonably necessary for all these folks to do XYZ that is contemplated on Page 9, under subsection 3. She doesn't know who makes that determination as to limited to that which is reasonably necessary. She doesn't understand the language, or why it is in there, but she doesn't have heartburn about it either, because Amendments #4, #5, and #6, on Page 3, don't apply to Blue Cross.

{Tape : 1; Side : B; Approx. Time Counter : 11.5 - 14.9}

SEN. FRANKLIN said truthfully she doesn't know that it makes a great deal of difference. They could leave out limited disclosure which is reasonably necessary, correct?

Russell Hill said this again, this language appears elsewhere in the code. He is not sure there is a difference between saying disclosure is reasonably necessary versus disclosure is limited to that which is reasonably necessary.

Susan Witte said Blue Cross withdraws its Amendment #4 in the spirit of getting out of the meeting. They will go to the next one, which again this may be taken care of, Page 9, Line 19.

Tom Ebzery asked if there was any language that **Russell Hill** might be able to supply that would make them feel better and then they could move right on by these just as fast as they could go.

Russell Hill clarified, about reasonably necessary?

Tom Ebzery answered about the second written authorization. Something that would make their principals feel very comfortable and which echos what he told them, if he can do that for them?

Russell Hill replied if what they need is further clarification that this guy doesn't need separate written authorization and these people do.

Tom Ebzery asked him if he wanted to prepare some language to that affect and maybe present it to the Committee? **Russell Hill** answered yes.

Susan Witte said he might also want to write separate written authorization as a definition and then you would write separate authorization does not apply to insurance function defined in (10) and they will get out of the meeting. Almost, she has one other quick amendment on Rule Making. This is the last amendment, it's on Page 12, Line 14. The Insurance Commissioner proposes to put record keeping requirements establish them by rule, **Bill Jensen** has heartburn about this.

{Tape : 1; Side : B; Approx. Time Counter : 14.9 - 17.4}

SEN. FRANKLIN asked what does he have heartburn about? **Susan Witte** answered that record keeping requirements should not be by Rule.

Russell Hill stated that ACLI felt very strongly about this too, and it was based on their assumption that 3 year Rule Making requirement that occurs, that they see there where they have added on Page 8, Lines 17 to Line 21, applies to all disclosures. That's not how the Department of Insurance understood this, but if ACLI and Blue Cross are comfortable, with again clarifying that this record keeping requirement applies not only to disclosures within the scope of a permission that the individual gave, but to those disclosures that they made, without permission, then the Rule Making really isn't necessary. They had distinguished between those two. So that the commissioner couldn't come in and fine tune how a company kept records, if it was disclosing, pursuant to the permission of the individual. But he could come in and say, because he needs to know that in an investigation and the individuals need to know that. Say how you are going to keep a record, if you are disclosing without permission, now the first covers the second. There is no need for Rule Making in that regard.

SEN. FRANKLIN said potentially they could clarify on Page 8, the disclosure, and then they don't need rule making. **Russell Hill** replied if he understands their concern correctly and that satisfies it.

SEN. FRANKLIN said maybe that is what they need to do. So clarify the disclosure issue on Page 8, and eliminate rule making. **Russell Hill** said he'd be curious in asking if other companies or interests don't like that?

SEN. FRANKLIN asked ACLI if they are comfortable with that?

Jon Metropoulis answered they would take a look at it. It sounds improved, let him see what the language will look like.

Susan Witte said she has two more things. There are a whole bunch of privacy issues coming down the pike. She doesn't know what they are. She is hoping it doesn't preempt this, they are going to know by summer time. Secondly, she said in testimony, Blue Cross doesn't hand out anybody's medical records. In fact they fire people for talking about it. With that in mind, she's happy.

Susan Fox clarified they really didn't approve any amendments, right?

CHAIRMAN THOMAS confirmed that was correct.

SEN. FRANKLIN said so they have to meet again.

CHAIRMAN THOMAS clarified yes. He understands that **Russell Hill** is going to meet with **Tom and Jon** and work up an amendment. He will work with them, and **Paige**, etc., and then **Susan Fox** has her notes on what they kind of agreed to. Let the parties work out the language and they can work with **SEN. FRANKLIN** and then they can schedule something next week.

SEN. GRIMES said something that he was going to throw out. It is starting to become confusing as they go through this, and that's whether or not its always clear who first has the information. And when it becomes secondary and third. It seems like in some cases you might have two or three people have the information at the same time, to share that information might end up being.... there might be a legitimate way, Two of these entities may share the information back and forth more than once or twice and not need the disclosure just because of the way that the information was gained. Just a question, he will leave it out there.

Russell Hill asked if he should wait on responding to that? One thing that he never pointed out, this insurer can give to two or more of these other red boxes. So as long as this insurer gets the information, they can give at different times to multiple red boxes and if these people get the information from this insurer at different times, he doesn't think that makes a difference on what they do with the information. He asked if he was missing the question?

SEN. GRIMES said that answered it somewhat, but he will take it up with him later.

Closing by the Sponsor:

SEN. FRANKLIN said thank you very much. It just has been a long time since she has had an insurance work session. For the record she feels a little protective of **Russell Hill** since he has worked hard on this bill, and she understands with the flow of things, and **Paige Dringman** is new, she just got hired yesterday, there's pieces people weren't privy to, but this bill has been out there for many months. And it doesn't preclude the fact that they shouldn't come to the table and talk about it and the Committee is clear on it, but just for the record, it wasn't like it was sprung on people.

Tom Ebzery answered **SEN. FRANKLIN** that is true, but there has been several versions, Godzilla 1, we're not going to have this one, but secondly, he knows that she wants to be protective of **Russell Hill**, but he's been dealing with **Russ** for six and eight years, he doesn't need ... he needs no protection.....he is perfectly capable of handling the hard issues very well, he's a pretty tough guy.

SEN. FRANKLIN said, but the bill has been out there, that's the point. It has.

CHAIRMAN THOMAS said, thank you for that point and they stand adjourned.

{Tape : 1; Side : B; Approx. Time Counter : 17.4 - 30}

ADJOURNMENT

Adjournment: 12:35 P.M.

SEN. DUANE GRIMES, Vice Chairman

MARTHA MCGEE, Secretary

AB/MM

EXHIBIT (phs17bad)